

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

C2A No. 01/2008,
CMP No. 01/2008

Date of decision: 05.06.2009

Sunil Verma and ors.

vs.

Varinder Sharma and ors.

CORAM

MR. JUSTICE SUNIL HALI, JUDGE

Appearing counsel:

For Appellant(s) Mr. O. P. Thakur, Advocate.
For respondent(s): Mr. S. K. Shukla, Advocate.

(i) Whether to be reported in Press, Journal/Media: Yes

(ii) Whether to be reported in Journal/Digest: Yes

For having committed three defaults of two months each in payment of rent within a period of 18 months, a decree/order for eviction of the defendants/appellants from the shop situated at Court Road, Udhampur was passed by the Trial Court on 9.6.2004. Feeling aggrieved by the said decree/order of the trial court, an appeal was filed by the defendants/appellants before the learned District Judge, Udhampur, which was dismissed on 21.9.2007. It is in these circumstances, the present appeal has been filed by the appellants in this court.

I have heard learned counsel for the parties and perused the record.

The appellants have framed seven substantial questions of law in order to seek indulgence of this court in this appeal. The grievance of the appellants is that orders of both the courts below were bad on account of the fact that there was dispute relating to the actual rent which was payable by the appellants and unless the dispute regarding rent is not resolved under Section 11 of the Jammu

and Kashmir Houses and Shops Rent Control Act, 1966 decree/order cannot be passed. It is stated that respondents were demanding rent as Rs. 230/- per month, whereas the appellants have contested that the payable rent as Rs. 200/- per month. There is no dispute that defaults were committed by the appellants from September, 1994 to April 1996. The arrears of rent payable by the appellants was claimed by the respondents as Rs. 4,570/-, whereas the appellants claimed that their liability to pay the rent was Rs. 3000/-.

On the other hand, Mr. Shukla, learned counsel for the respondents states that there is no dispute that appellants have committed the defaults in payment of rent of two months each within a period of 18 months. Merely, because the appellant stated that they have to pay Rs. 200/- and not Rs. 230/- per months as claimed by the respondents, cannot absolve him from the liability of payment of rent, which they have admitted to be Rs. 200/- per month.

I find force in the contention of Mr. Shukla. The contention of Mr. Thakur, learned counsel for the appellants that unless dispute with respect to the rent which was payable was not decided, the same is not required to be paid, seems to be unfounded. The expression legal payable rent as enumerated under Section 11 of the Houses and Shops Rent Control Act would mean rent which is admitted to be paid by the parties by an agreement.

It is not in dispute that appellants admitted a rent of Rs. 200/- per month instead of 230/-. Merely because the issue regarding rent was not resolved did not absolve the appellants to pay the rent, they admit. The appellants have admitted Rs. 200/- per month as payable rent. Even this amount has not been paid by the appellants as has been held by both the courts below and have committed three defaults of two month each within a period of 18 months.

In view of the above, I find no force in this appeal. The same is, as such, dismissed. However, I direct that the appellants shall not be evicted from the shop for a period of four months from the date of order, subject to furnishing of an undertaking that after four months they will hand over the possession of the shop to the respondents.

(SUNIL HALI)
JUDGE

JAMMU
05.6.2009
Karam*